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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,092	10/06/2003	Toshimi Yamanoi	040302-0350	4501

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EXAMINER	
LUONG, VINH	
ART UNIT	**PAPER NUMBER**
3682	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	**Application No.** 10/678,092	**Applicant(s)** YAMANOI ET AL.
	Examiner Vinh T. Luong	**Art Unit** 3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) *6, 8* is/are withdrawn from consideration.

5)☒ Claim(s) *3-5* is/are allowed.

6)☒ Claim(s) *1,2 and 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on *07 November 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Vinh T. Luong
Primary Examiner

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *Attachments 1 and 2*.

1. The Amendment filed on November 7, 2005 has been entered.

2. Claims 6 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 12, 2005.

3. The drawings were received on November 7, 2005. The Examiner accepts these drawings.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kijima (JP 62-152925).

Regarding claim 1, Kijima teaches an accelerator pedal device comprising: a belt fastening detector 17, 18, 18A (at A in Fig. 1) configured to detect fastening and unfastening states of a seat belt 16; and a pedal reactive force enhancer 13 (see Attachment 1) configured to enhance reactive force against treading pressure on an accelerator pedal 12 when an ignition switch 20 is turned on while the seat belt 16 is unfastened, based on a detecting operation of the belt fastening detector 17, 18, 18A.

Regarding claim 7, Kijima teaches an accelerator pedal device comprising: belt fastening detecting means 17, 18, 18A for detecting fastening and unfastening states of a seat belt 16; and pedal reactive force enhancing means 13 for enhancing reactive force against treading pressure on an accelerator pedal 12 when an ignition switch 20 is turned on while the seat belt 16 is unfastened, based on a detecting operation of the belt fastening detecting means 17, 18, 18A.

6. Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Levine (US Patent No. 6,820,895 B2).

Regarding claim 1, Levin teaches an accelerator pedal device comprising: a belt fastening detector 86 (Fig. 6) configured to detect fastening and unfastening states of a seat belt (Fig. 10A); and a pedal reactive force enhancer 36, 28, 24, etc. (Figs. 2-5) configured to enhance reactive force against treading pressure on an accelerator pedal 4 when an ignition switch 310 (Fig. 11) is turned on while the seat belt is unfastened, based on a detecting operation of the belt fastening detector 86.

Regarding claim 2, the pedal reactive force enhancer comprises a spring tension enhancing mechanism 36, 28, 24, etc. configured to enhance tension of a return spring (unnumbered. See Attachment 2) being mounted to be connected between a pedal arm 22 and a pedal support member 18 to retain the pedal arm 22 in an initial position.

Regarding claim 7, Levin teaches an accelerator pedal device comprising: belt fastening detecting means 86 for detecting fastening and unfastening states of a seat belt (Fig. 10A); and pedal reactive force enhancing means 36, 28, 24, etc. for enhancing reactive force against treading pressure on an accelerator pedal 22 when an ignition switch is turned on while the seat belt is unfastened, based on a detecting operation of the belt fastening detecting means 86.

7. Claims 3-5 are allowed.

8. Applicant's arguments filed November 7, 2005 have been fully considered but they are not persuasive.

DRAWINGS

The objection to the drawings is withdrawn in view of Applicant's replacement drawings.

35 USC 102

KIJIMA

Applicant contended:

> Kijima does not disclose, teach, or suggest a device that includes "a pedal reactive force enhancer configured to enhance reactive force against treading pressure on an accelerator pedal when an ignition switch is on while the seat belt is unfastened, based on a detecting operation of the belt fastening detector" because *Kijima only discloses a device for suppressing the opening degree of a throttle valve.* The device disclosed by Kijima does not "enhance reactive force against treading pressure on an accelerator pedal when an ignition switch is on while the seat belt is unfastened, based on a detecting operation of the belt fastening detector." (Emphasis added).

Applicant apparently uses an "*ipsissimis verbis*" test that requires the same terminology in the art in order to find anticipation. See footnote 11 of *AKZO N.V. v. International Trade Commission*, 1 USPQ2d 1241, 1245 (CAFC 1986). It is well settled that an inventor can be his/her own lexicographer. Thus, Kijima does not need to use Applicant's terminology. More importantly, it is well settled that an anticipatory reference needs not duplicate word for word what is in the claims. Anticipation can occur when a claimed limitation is "inherent" or otherwise implicit in the relevant reference. *Standard Haven Products Inc. v. Gencor Industries, Inc.*, 21 USPQ2d 1321, 1328 (Fed. Cir. 1991).

In the instant case, Kijima discloses not only a device for suppressing the opening degree of a throttle valve but also an electric circuit 18-22 to connect the ignition switch to the belt fastening 16A, 17, 18, etc. Moreover, Kijima's abstract states:

> *If a seat belt is not yet applied*, when an ignition key switch 20 is turned-ON, a solenoid valve 14 does not conduct, and a rod 14A is in extended state. *If an accelerating pedal 12 is stepped in this state*, a throttle lever 7 turns, together with the turn of a throttle

> arm 9, and said lever 7 contacts the rod 14A, and the turn over this degree can be prevented. Therefore, *the opening degree of a throttle valve 5 is suppressing* and the intake quantity of the mixed gas is reduced, and *the car speed over a constant value is restricted.* Further, even if the accelerating pedal 12 is s[p]eed when the lever 7 and the rod 14A contact, only the throttle arm 9 turns. (Emphasis added).

In other words, if the driver tries to drive Kajima's vehicle by turning on Kijima's ignition switch and does not fasten the seat belt, the throttle valve 5 cannot be open at full throttle since its degree opening is suppressed. Consequently, the amount of mixed gas introduces to the combustion engine is reduced, and the vehicle speed is restricted or limited. Simply put, the driver cannot drive the vehicle at high speed even if the driver applies more pressure on the accelerator pedal when the seatbelt is unfastened. Put in another fashion, Kijima provides a safety device that enhances the driver to fasten the seatbelt in the same manner as Applicant's device.

More importantly, Kajima's system includes the lever or linkage 13 that enhances the tension of the spring (unnumbered at 13 in Fig. 1. See Attachment 1). The instant lever/linkage is connected to the pedal 12 in a similar manner as Applicant's lever 7, which is operatively connected to Applicant's pedal 3. Kajima's lever or linkage 13 inherently enhances the reactive force against the driver's treading pressure on Kajima's accelerator 12 when the ignition switch 20 is on while the seat belt 16 is unfastened based on the belt fastening detector 17, 18, 18A as shown in Fig. 1 and explained below.

It is well settled that an anticipatory reference needs not provide such explanation to anticipate what artisan would know as evidenced by standard textbook. *In re Opprecht*, 12 USPQ2d 1235 (Fed. Cir. 1989).

In the case at hand, it is well known law of physics that "*to every action there is always opposed an equal reaction; or, the mutual actions of two bodies upon each other are always equal, and directed to contrary parts*." See *Newton's Third Law of Motion* on pages 87 and 88 of *Halliday Resnick Physics* textbook attached. Therefore, when the driver applies treading pressure/action on the pedal 12, there must be an opposed reactive force resulted by the linkage 13 against the pedal 12. Hence, Kijima's linkage/lever 13 with its enhanced reactive force reads on the so-called "a pedal reactive force enhancer" in the claims.

For the foregoing reasons, the rejection based on Kijima is maintained.

LEVINE

Using the same vein of arguments based on "*ipsissimis verbis*" test, Applicant asserted that Levine is silent in regard to "a pedal reactive force enhancer configured to enhance reactive force against treading pressure on an accelerator pedal when an ignition switch is on while the seat belt is unfastened, based on a detecting operation of the belt fastening detector."

The Examiner respectfully submits that the fundamental Newton law of physics above teaches that when the driver applies treading pressure/action on Levine's pedal 4, there must be an opposed reactive force resulted by the linkage 36, 28, 24, 26, etc. against the pedal 4. Hence, Levine's linkage/lever 36, 28, 26, 24, etc. with its enhanced reactive force reads on "a pedal reactive force enhancer" in the claims.

Applicant further argued that Levine's spring shown in Fig. 2 is not used to enhance the pedal reactive force nor is the spring controlled in response to the operation of a belt-fastening detector.

Contrary to Applicant's subjective observation, Levine's spring is a return spring in the same manner as Applicant's spring 5. Since Levine's spring is connected to the link 28, 24 thus, the movement of the link 28, 24 as shown in Figs. 2 and 3 inherently enhances its tension. Therefore, Applicant's observation is unsupported not only by fundamental law of physics but also by substantial evidence in the record, such as, Levine's Figs. 6 and 10A-12C and Levine's description in col. 5, line 3 through col. 14, line 46.

For the foregoing reasons, the rejection based on Levine is maintained.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

January 4, 2006

Vinh T. Luong
Primary Examiner

ATTACHMENT 1

〔発明の効果〕

以上の説明によって明らかな如く、本発明によればシートベルト未着装時において強制的に速度が一定以上出せないようになるので、運転者はシートベルトを着装せざるを得なくなり、走行時におけるシートベルト装着率が高まる。この結果、万一の事故の際でも運転者の安全が図れる。

また、車庫入れや私道における低速試運転など必ずしもシートベルト着装の必要のない場合は、シートベルト未着装でも支障なく低速運転ができる。

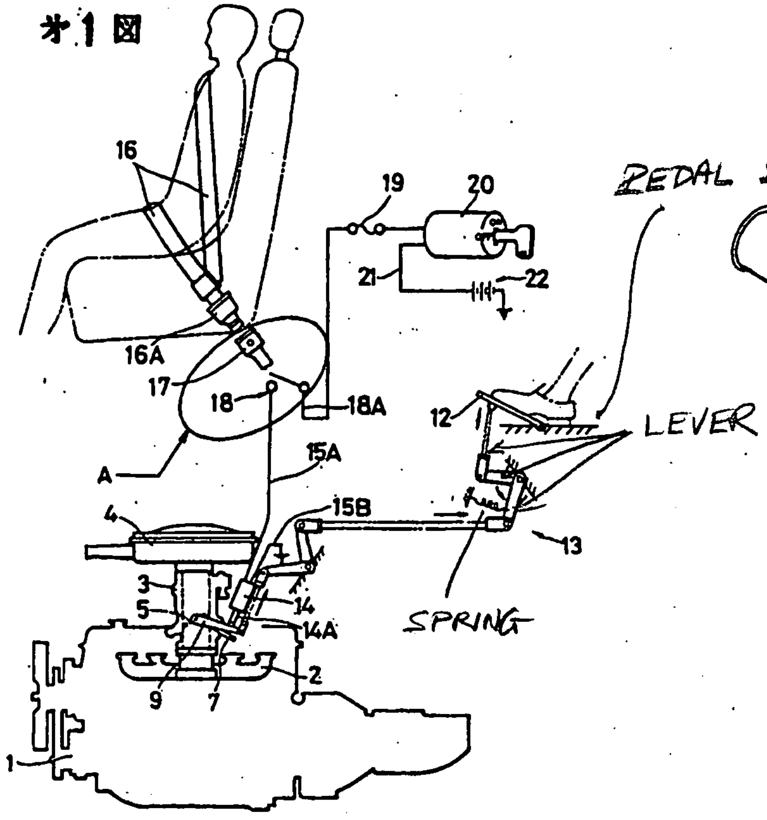
4. 図面の簡単な説明

図面は本発明に係り、第1図は速度制御機構の全体構成図、第2図はスロットルシャフト部の詳細を示す拡大斜視図、第3図はシートベルト未着装時の作動説明図、第4図はシートベルト着装時の作動説明図である。

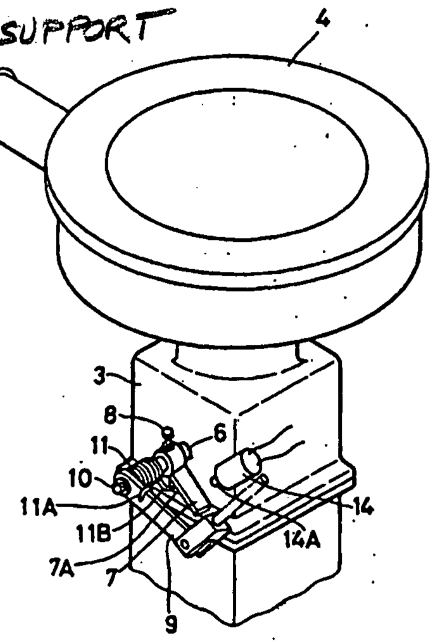
1…エンジン本体
2…インテークマニホールド
3…キャブレター　　5…スロットルバルブ
6…スロットルシャフト
7…スロットルレバー　8…調整ねじ
9…スロットルアーム　11…コイルスプリング
14…ソレノイドバルブ　16…シートベルト
17…固着具
18…シートベルトスイッチ
20…イグニッションキースイッチ

特許出願人　木島克美
代理人　弁理士　磯野道造

第1図



第2図



ATTACHMENT 2

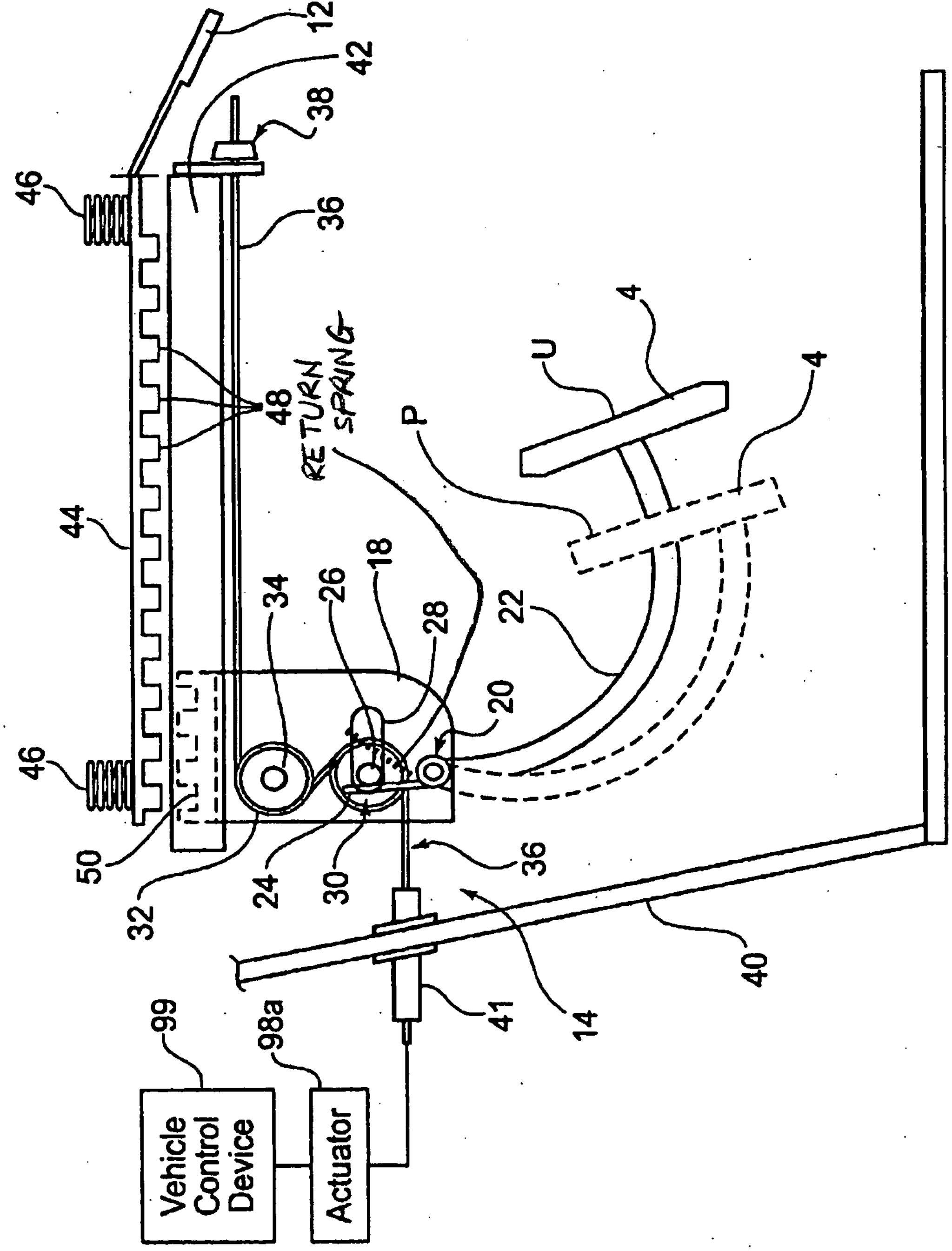

RETURN SPRING
P
U
Vehicle Control Device
Actuator

FIG. 3

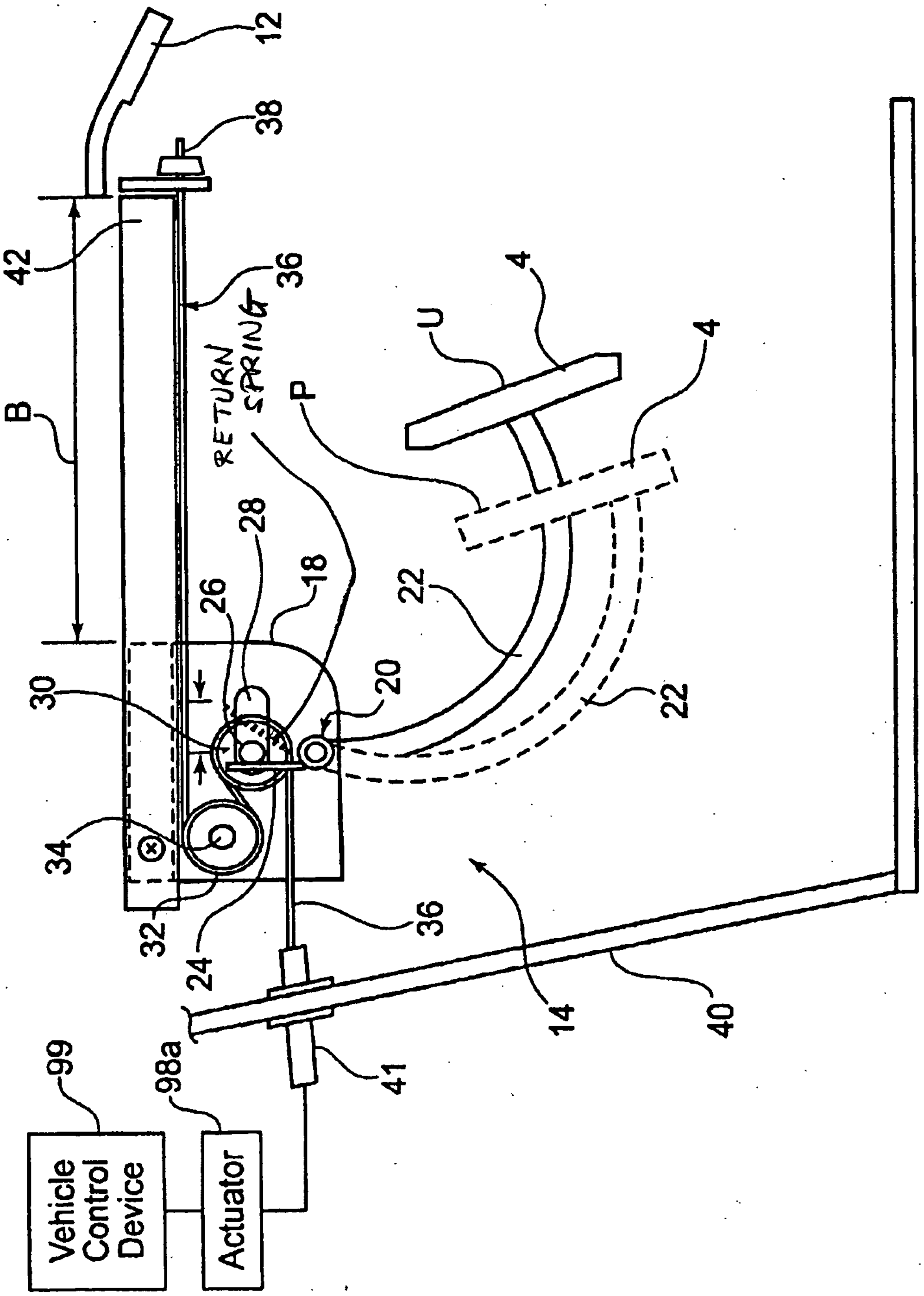

B
RETURN SPRING
P
U
Vehicle Control Device
Actuator

FIG. 2